Electronically Filed
Docket: 2012-6 CRB CD 2004-2009
Filing Date: 05/08/2018 04:59:14 PM EDT

Before the COPYRIGHT ROYALTY JUDGES Washington, DC

In the Matter of) Docket No. 2012-6 CRB CD 2004-2009
Distribution of the 2004-2009) (Phase II)
Cable Royalty Funds)
	<u></u>
In the Matter of) Docket No. 2012-7 CRB SD 1999-2009) (Phase II)
Distribution of the 1999-2009)
Satellite Royalty Funds)
)

SETTLING DEVOTIONAL CLAIMANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to 37 C.F.R. § 351.14 and the Judges' April 19, 2018 *Order on Joint Motion re Post-Hearing Scheduling*, the Settling Devotional Claimants hereby submit their Proposed Findings of Fact and Conclusions of Law in these proceedings following the hearing held before the Copyright Royalty Judges on April 9-10, 2018.

Matthew J. MacLean (D.C. Bar No.479257)

Matthew.MacLean@PillsburyLaw.com

Michael A. Warley (D.C. Bar No. 1028686)

Michael.Warley@PillsburyLaw.com

Jessica T. Nyman (D.C. Bar No. 1030613)

Jessica.Nyman@PillsburyLaw.com

PILLSBURY WINTHROP SHAW PITTMAN LLP

1200 17th Street NW

Washington, DC 20036

Telephone: 202-663-8000 Facsimile: 202-663-8007

Counsel for the Settling Devotional Claimants

TABLE OF CONTENTS

I.	PRC)P(OSED FINDINGS OF FACT	1
	Α. (Cla	imants at Issue	2
	В. Т	The	e SDC's Methodology	4
	-	1.	Viewership Is an Appropriate Metric of Relative Value Among Groups of Homogeneous Programs in the Devotional Category	9
		2.	Dr. Erdem Utilized the Most Reliable and Complete Data Available	11
	3	3.	Dr. Erdem Conducted Additional Analysis to Address the Judges' Concerns	12
II.	CON	NC	LUSIONS OF LAW	19
	A. l	Leg	gal Standard	19
	В. Т	The	e SDC's Methodology Is Reliable and Supported by Precedent	21
Ш	CON	VC	LUSION	26

TABLE OF AUTHORITIES

(าฉ	C	PC
•	_a	J.	CO

Christian Broadcasting Network, Inc. v. Copyright Royalty Tribunal, 720 F.2d 1295 (D.C. Cir. 1983)
Intercollegiate Broadcast System, Inc. v. Copyright Royalty Board, 571 F.3d 69 (D.C. Cir. 2009)
Nat'l Assoc. of Broadcasters v. Copyright Royalty Tribunal, 146 F.3d 907 (D.C. Cir. 1992)
Nat'l Assoc. of Broadcasters v. Copyright Royalty Tribunal, 675 F.2d 367 (D.C. Cir. 1982)
Program Suppliers v. Librarian of Congress, 409 F.3d 395 (D.C. Cir. 2005)
Settling Devotional Claimants v. Copyright Royalty Board, 797 F.3d 1106 (D.C. Cir. 2015)
U.S. v. Cartwright, 411 U.S. 546 (1973)
Statutes and Codes
17 U.S.C. § 111(d)(4)
17 U.S.C. § 803(a)
5 U.S.C. § 706
Rules and Regulations
37 C.F.R. §351.4(b)(2)
Administrative Proceedings
1986 Cable Royalty Distribution Proceeding, Notice of final determination, Docket No. CRT 88-2-86CD (Phase II), 54 Fed. Reg. 16148 (Apr. 21, 1989)
Distribution of 1998-1999 Cable Royalty Funds, Final distribution determination, Docket No. 2008-1 CRB CD 98-99 (Phase II), 80 Fed. Reg. 13423 (Mar. 13, 2015) passim
Distribution of 1998-1999 Cable Royalty Funds, Final Order, Docket No. 2001-8 CARP CD 98-99 (Phase I), 69 Fed. Reg. 3606 (Jan. 26, 2004)
Distribution of 1999-2009 Satellite Royalty Funds, Initiation of Phase II proceeding and request for Petitions to Participate, Dockets No. 2012-7 CRB SD 2000-2009, 2008-5 CRB SD 1999-2000, 78 Fed. Reg. 50114 (Aug. 16, 2013)
Distribution of 2000-2003 Cable Royalty Funds, Final Distribution Order, Docket No. 2008-2 CRB CD 2000-03 (Phase II), 78 Fed. Reg. 64984 (Oct. 30, 2013), aff'd in part, Independent Producers Group v. Librarian of Congress, 792 F.3d 132 (D.C. Cir. 2015); vacated in part on other grounds, Settling Devotional Claimants v. Copyright Royalty Board, 797 F.3d 1106 (D.C. Cir. 2015)

Distribution of 2004 and 2005 Cable Royalty Funds, Distribution Order, Docket No. 2007-3 CRB CD 2004-2005 (Phase I), 75 Fed. Reg. 57063 (Sept. 17, 2010) 19
Distribution of 2004-2009 Cable Royalty Funds, Initiation of Phase II proceeding and request for Petitions to Participate, Docket No. 2012-6 CRB CD 2004-2009, 78 Fed. Reg. 50113 (Aug. 16, 2013)
Memorandum Opinion and Ruling on Validity and Categorization of Claims, Mar. 13, 2015
Order Denying IPG Third Motion for Modification of March 13, 2015 Order, June 1, 2016
Order Denying IPG's Emergency Motion for Stay of Proceedings, Jan. 4, 2018
Order Granting Final Distribution of 2008 Satellite Royalties for the Devotional Category, Dec. 22, 2015
Order Granting in Part Joint Motion In Limine and Denying Joint Motion for Summary Disposition, Apr. 6, 2018
Order Granting IPG Fourth Motion for Modification of March 13, 2015 Order, Oct. 27, 20163
Order Granting MPAA and SDC Motions to Strike IPG Amended Written Direct Statement and Denying SDC Motion for Entry of Distribution Order, Oct. 7, 2016
Order on IPG Motion for Leave to File Amended Written Direct Statement, Jan. 10, 2017 4
Order Reopening Record and Scheduling Further Proceedings, May 4, 2016
Order Rescheduling Hearing, Sept. 28, 2017

I. PROPOSED FINDINGS OF FACT

- 1. The Judges initiated proceedings to determine the proper distribution of the 2004-2009 cable and 1999-2009 satellite royalty funds attributable to the Devotional and Program Suppliers categories on August 16, 2013. *See Distribution of 2004-2009 Cable Royalty Funds*, Initiation of Phase II proceeding and request for Petitions to Participate, Docket No. 2012-6 CRB CD 2004-2009,78 Fed. Reg. 50113 (Aug. 16, 2013); *Distribution of 1999-2009 Satellite Royalty Funds*, Initiation of Phase II proceeding and request for Petitions to Participate, Dockets No. 2012-7 CRB SD 2000-2009, 2008-5 CRB SD 1999-2000, 78 Fed. Reg. 50114 (Aug. 16, 2013) ("*Commencement of Phase II Distribution Proceeding*"). The Judges held a five-day evidentiary hearing on April 13-17, 2015, and subsequently determined that "no party has presented a methodology and data that, together, are sufficient to support a final distribution in the contested categories." *Order Reopening Record and Scheduling Further Proceedings*, May 4, 2016, at 1 ("*Order Reopening Record*").
- 2. The Judges set aside all of the parties' written and oral testimony and evidence, and directed the parties to present new evidence, including additional data and expert testimony. The Judges allowed the parties to reintroduce any previously produced evidence and to designate prior hearing testimony in accordance with 37 C.F.R. § 351.4(b)(2). *Id.* at 8.
- 3. The Judges called a hearing on April 9-10, 2018, in this reopened proceeding to determine the appropriate Phase II distribution of the 2004-2009 cable and 1999-2009 satellite royalty funds attributable to the Devotional and Program Suppliers categories. *Order Rescheduling Hearing*, Sept. 28, 2017. These royalty funds are to be distributed among the Settling Devotional Claimants (the "SDC") and the Independent Producers Group ("IPG")

claimants in the Devotional category, and the IPG claimants and the MPAA-Represented Program Suppliers ("MPAA") claimants in the Program Suppliers category.

A. Claimants at Issue

- 4. After holding a five-day evidentiary hearing, the Judges identified the valid claimants to the royalty funds at issue in this proceeding in their *Memorandum Opinion and Ruling on Validity and Categorization of Claims* of March 13, 2015 ("Claims Ruling").
- 5. The SDC are comprised of the following claimants in this proceeding, all in the Devotional category (the years and funds in which each claimant is participating are set forth in Ex. 7001 (Sanders WDT) at App. B):
 - Amazing Facts, Inc.
 - American Religious Town Hall, Inc.
 - Billy Graham Evangelistic Association
 - Catholic Communications Corporation
 - Christian Television Network, Inc.
 - The Christian Broadcasting Network, Inc.
 - Coral Ridge Ministries Media, Inc.
 - Cottonwood Christian Center
 - Crenshaw Christian Center
 - Crystal Cathedral Ministries, Inc.
 - Evangelical Lutheran Church in America
 - Faith for Today, Inc.
 - Family Worship Center Church, Inc. (d.b.a. Jimmy Swaggart Ministries)
 - International Fellowship of Christians & Jews, Inc. (cable only)
 - In Touch Ministries, Inc.
 - It is Written
 - John Hagee Ministries, Inc. (a.k.a. Global Evangelism Television)
 - Joyce Meyer Ministries, Inc. (f.k.a. Life in the Word, Inc.)
 - Kerry Shook Ministries (a.k.a. Fellowship of the Woodlands)
 - Lakewood Church (a.k.a. Joel Osteen Ministries)
 - Liberty Broadcasting Network, Inc.
 - Messianic Vision, Inc.
 - New Psalmist Baptist Church
 - Oral Roberts Evangelistic Association, Inc.

- RBC Ministries
- Reginald B. Cherry Ministries
- Rhema Bible Church (a.k.a. Kenneth Hagin Ministries)
- Ron Phillips Ministries
- Speak the Word Church International
- St. Ann's Media
- The Potter's House of Dallas, Inc. (d.b.a. T.D. Jakes Ministries)
- Word of God Fellowship, Inc. (d.b.a. Daystar Television Network)
- Zola Levitt Ministries

Claims Ruling, at 1, n.1; Ex. 7001 (Sanders WDT) at App. B.

- 6. IPG initially asserted claims on behalf of eighteen claimants in the Devotional category; however, only the following claimants were deemed to have valid, compensable claims for which distribution remains at issue:
 - Billy Graham Evangelistic Association (satellite only 2001-2003)
 - IWV Media Group, Inc. (no claims for 1999-2001)
 - Jack Van Impe Ministries International (no claims for 1999, 2000 and 2008 satellite)
 - Life Outreach International (no claim for 2008 satellite)
 - Salem Baptist Church of Chicago, Inc. (no claims for 1999-2000, 2003).

Claims Ruling, at Ex. A-2; Order Denying IPG Third Motion for Modification of March 13, 2015 Order, June 1, 2016; Order Granting IPG Fourth Motion for Modification of March 13, 2015 Order, Oct. 27, 2016.

- 7. The Judges already determined the Phase II allocation of 1999 satellite royalty funds attributable to the Program Suppliers category and distributed those funds. *See Commencement of Phase II Distribution Proceeding*, 78 Fed. Reg. at 50115. Therefore, only the SDC and IPG sought a 1999 satellite royalty award in this proceeding.
- 8. The Judges already awarded 100% of the 2008 satellite royalties in the Devotional category to the SDC. *Order Granting Final Distribution of 2008 Satellite Royalties for the Devotional Category*, Dec. 22, 2015.

9. The SDC filed an opposed motion, which remains pending, seeking distribution of 100% of the satellite royalties in the year 2000 in the Devotional category on the basis that both the SDC and IPG proposed this distribution in their written direct testimony. *SDC's Motion for Final Distribution of 2000 Satellite Royalties*, Nov. 21, 2017.¹

B. The SDC's Methodology

10. The only distribution methodology presented in the Devotional category was the SDC's proposed methodology. IPG filed a written direct statement of Dr. Charles D. Cowan proposing a distribution methodology, and subsequently filed two amended written direct statements (one of which was stricken and one of which was filed with leave of the Judges). *Order Granting MPAA and SDC Motions to Strike IPG Amended Written Direct Statement and Denying SDC Motion for Entry of Distribution Order*, Oct. 7, 2016; *Order on IPG Motion for Leave to File Amended Written Direct Statement*, Jan. 10, 2017. But the Judges excluded IPG's written direct statement as a result of IPG's "admitted inability to produce Dr. Cowan for the oral hearing that the Judges have ordered," and "IPG's failure to explain why Dr. Cowan has refused to appear, and its intimation that it lacks 'good cause' for his non-appearance." *Order Granting in Part Joint Motion In Limine and Denying Joint Motion for Summary Disposition*, Apr. 6, 2018, at 4 n.6 and accompanying text. Further, all prior testimony that IPG attempted to designate was rejected by the Judges for non-compliance with the Judges' rules to properly designate

-

Also pending are motions filed on March 10, 2017, by MPAA and SDC to sanction IPG, which motions were invited by the Judges' Order on IPG Motion for Leave to File Amended Written Direct Statement, Jan. 10, 2017 at 7. SDC's Motion for Sanctions Against Independent Producers Group and Its Counsel, Mar. 10, 2017; MPAA's Motion to Impose Sanctions Against Independent Producers Group for Disregarding the Judges' Procedural Rules, Mar. 10, 2017.

testimony, subject to their being properly presented for impeachment. *Id.* at 2-3; Tr. 146:3-147:9 (Barnett, C.J.).

- 11. MPAA submitted a distribution methodology in the Program Suppliers category proposed by Dr. Jeffrey Gray, but MPAA's methodology does not propose any distribution in the Devotional category. *See* Ex. 8002 (Gray WDT). In fact, Dr. Gray acknowledged that use of his methodology in the Devotional category would be "challenging," due to his technique for projecting ratings into non-metered markets for which he lacks viewership data. Tr. 479:13-20 (Gray).
- 12. Accordingly, the SDC's methodology is the only methodology before the Judges in the Devotional category. Because IPG filed no rebuttal testimony and presented no rebuttal witness, there is no record evidence challenging the SDC's methodology. *See IPG's Notice Regarding Written Rebuttal Statements Pending Resolution of Worldwide Subsidy Group v. Hayden*, Dec. 15, 2017; *Order Denying IPG's Emergency Motion for Stay of Proceedings*, Jan. 4, 2018.
- 13. The SDC's methodology is based on viewership as determined by local ratings reported by Nielsen in its Reports on Devotional Programming ("RODP"), scaled by the number of distant subscribers receiving each program. Tr. 53:8-54:4 (Erdem); Ex. 7000 (Erdem WDT) at 13-16. The SDC's methodology was presented by expert witnesses Dr. Erkan Erdem and Mr. John Sanders. Ex. 7000 (Erdem WDT); Ex. 7001 (Sanders WDT).
- 14. Dr. Erdem is an experienced economist and statistician and a Managing Director at KPMG. Ex. 7000 (Erdem WDT) at Ex. 1, Curriculum Vitae. As in previous proceedings before the Judges, Dr. Erdem was qualified as an expert in econometrics, statistics, and data analysis. Tr. 50:10-51:16 (Erdem).

- 15. Mr. Sanders has been a Principal at Bond & Pecaro, Inc. since 1986, and is an experienced and well-qualified appraiser who has been personally involved in more than 3,000 media asset valuations, including valuations for buyers and sellers of TV programs and TV retransmission rights, including cable and satellite operators. Tr. 163:12-17; Tr. 164:1-5 (Sanders); Ex. 7001 (Sanders WDT) at App'x A, Qualifications of John S. Sanders. As in previous proceedings before the Judges, Mr. Sanders was qualified by the Judges as an expert in media market research and valuation of media assets, including television programs. Tr. 164:6-23, 169:3-4 (Sanders).
- 16. The SDC also designated the testimony from the initial proceedings of Ms. Toby Berlin, the former Vice President of Program Acquisition at DIRECTV and a respected consultant in cable and satellite programming matters. Ex. 7002 (Berlin Prior Written Testimony (May 9, 2014)); Ex. 7003 (Berlin Prior Oral Testimony (Apr. 14, 2015)). Ms. Berlin was qualified by the Judges in the initial proceeding as an expert in the field of satellite and cable television programming. Ex. 7003 at Tr. 75:19-76:11 (Berlin).
- 17. Dr. Erdem relied on data from Nielsen sweeps periods reported in the RODPs to obtain a measure of local viewing for SDC and IPG programming. Ex. 7000 (Erdem WDT) at 13; Tr. 55:1-24 (Erdem). He then scaled these local program ratings by the number of distant subscribers who had access to those programs using data from the Cable Data Corporation ("CDC"). Ex. 7000 (Erdem WDT) at 13-15; Tr. 53:8-54:4 (Erdem).
- 18. The SDC methodology is a straightforward application of the RODP data from Nielsen that is specifically focused on Devotional programming. This type of niche report is actually used in the industry to make scheduling and programming decisions. Ex. 7001 (Sanders WDT)

- at 15; *see also* Ex. 7005 (Mayhue Declaration) at ¶ 4 (noting that owners of Devotional programming relied on Nielsen RODPs to track performance).
- 19. To avoid potential complications arising from any treatment of the superstation WGNA, which is the most widely carried "superstation" and which has an established practice of substituting programming that originally aired on its local WGN signal in Chicago, IL, Dr. Erdem excluded WGNA from his analysis. Ex. 7000 (Erdem WDT) at 16. Due to its superstation status, WGNA reached approximately 50% of all subscribers on average during the relevant time period. Tr. 125:8-12 (Erdem). Due to WGNA's practice of substituting Devotional and Program Suppliers programming in place of WGN's local television programming, a substantial portion of the Devotional content on WGNA is non-compensable in these proceedings. Ex. 7001 (Sanders WDT) at 19-20. Of the remaining compensable Devotional content on WGNA, most is not regularly scheduled, and thus Nielsen does not measure ratings for them in the RODPs. Tr. 126:1-19 (Erdem).
- 20. The only regularly scheduled compensable Devotional program on WGNA during the time period at issue in this proceeding was the SDC-claimed program *Miracles Now*, retransmitted in 1999-2001. Ex. 7000 (Erdem WDT) at 16 n.25. In the entire time period of 1999 through 2009, there were only six compensable retransmissions of IPG-claimed Devotional programs, four in 2001 and a single retransmission in 2002 and 2003. *Id.* None of these IPG programs was regularly scheduled, none had any rating or evidence of viewing, and none had any value in Dr. Erdem's methodology. *Id.* IPG has presented no evidence that any of these six compensable retransmissions on WGNA, nor any other program not appearing in the RODPs, had any viewership or value. Tr. 241:3-242:7 (Sanders) ("A lot of things are possible, but I have

to base my decisions in all the appraisals that I do on, you know, some modicum of documented evidence").

- 21. As a result of this confluence of factors, Dr. Erdem concluded that WGNA was an outlier and that it was appropriate to exclude WGNA from his calculations. *See* Ex. 7000 (Erdem WDT) at 16. He also concluded that the exclusion of WGNA programming was not likely to significantly alter his analysis overall because of the nature of Devotional programming on WGNA. *Id.* Mr. Sanders agreed that, from a valuation perspective, the special nature of WGNA justified its exclusion from Dr. Erdem's methodology because it is difficult to effectively value that programming while also accounting for WGNA's size and unique features. Ex. 7001 (Sanders WDT) at 21.
- 22. The SDC's methodology is similar to the methodology that was applied by the Judges in the 1999 Phase II cable proceeding. *See Distribution of 1998-1999 Cable Royalty Funds*, Final distribution determination, Docket No. 2008-1 CRB CD 98-99 (Phase II), 80 Fed. Reg. 13423, 13442-43 (Mar. 13, 2015). However, Dr. Erdem improved that methodology by scaling the local RODP ratings by the number of subscribers able to access each program, so that the methodology accounts for both the volume and the relative value of the programming. Ex. 7000 (Erdem WDT) at 13-15. This is a standard appraisal practice, in which a measurement of value (local viewership) is multiplied by a measure of volume (the number of distant subscribers). Tr. 174:20-178:7 (Sanders). Mr. Sanders explained that this is analogous to appraising real estate, in which a market-based approach would be to identify a value per square foot, and then scale that value by the size of a given building to reach a total valuation. Tr. 174:20-175:9 (Sanders).

23. Based on this valuation process, Dr. Erdem calculated the following proposed distribution of royalties for the Devotional category:

Devotional Category Royalty Distribution for SDC and IPG Claimants

	Cable		Sate	llite
Year	IPG	SDC	IPG	SDC
1999	-	-	0.0%	100.0%
2000	-	-	0.0%	100.0%
2001	-	-	1.2%	98.8%
2002	-	-	1.5%	98.5%
2003	-	-	2.8%	97.2%
2004	10.9%	89.1%	1.2%	98.8%
2005	10.8%	89.2%	1.6%	98.4%
2006	12.5%	87.5%	8.8%	91.2%
2007	7.6%	92.4%	2.9%	97.1%
2008	9.8%	90.2%	-	-
2009	10.0%	90.0%	2.1%	97.9%

Ex. 7000 (Erdem WDT) at 29, Ex. 2.

- 1. Viewership Is an Appropriate Metric of Relative Value Among Groups of Homogeneous Programs in the Devotional Category.
- 24. Viewership is a valid and reliable methodology for comparing value between similar programs within a category. Ex. 7000 (Erdem WDT) at 12; Ex. 7001 (Sanders WDT) at 21; Tr. 177:25-178:-21 (Sanders). The Judges have previously determined, and the D.C. Circuit has affirmed, that viewership is "the predominant heuristic" that a CSO would consider when determining program value within a relatively homogeneous category of programming.

 Distribution of 2000-2003 Cable Royalty Funds, Final Distribution Order, Docket No. 2008-2 CRB CD 2000-03 (Phase II), 78 Fed. Reg. 64984, 64992-93 (Oct. 30, 2013), aff'd in part, Independent Producers Group v. Librarian of Congress, 792 F.3d 132 (D.C. Cir. 2015); vacated in part on other grounds, Settling Devotional Claimants v. Copyright Royalty Board, 797 F.3d 1106 (D.C. Cir. 2015).

- 25. Viewership may not be a relevant measure of value in Phase I (now Allocation) proceedings, where a comparison of ratings among heterogeneous program categories would undervalue the importance of attraction and retention of niche markets to cable and satellite services. *See* Ex. 7003 at Tr. 78:18-79:14 (Berlin). But within individual niche categories, cable operators and satellite providers "look at the Nielsen ratings, to decide which stations [they] would carry within the out of market DMAs." *Id.* at Tr. 79:2-21 (Berlin).
- Devotional programming serves an "important niche" of cable and satellite subscribers. Ex. 7002 (Berlin) at 7; *see also* Ex. 7001 (Sanders WDT) at 14 ("[D]evotional programming is a critical component of any menu of offerings by a cable or satellite system."). In contrast to the heterogeneous categories of programming at issue in Phase I proceedings, programs within the Devotional category at issue in this Phase II proceeding are "directed predominantly to a Christian audience, and can therefore be thought of as homogen[e]ous in terms of the subscriber base to which they are likely to appeal." *See* Ex. 7001 (Sanders WDT) at 17; *see also* Tr. 178:9-21 (Sanders) ("The use of ratings and Nielsen data in this [Phase II] exercise is more appropriate for programming that is homogeneous in nature, like Devotional programming"); Ex. 7003, Tr. 83:5-19 (Berlin) ("For the religious programming, I treated it pretty homogen[e]ous, and I relied on the ratings information to tell me what was most popular in those DMAs or out of market DMAs").
- 27. SDC expert witness Mr. John Sanders confirmed the validity of the SDC's ratings-based methodology in this proceeding. Based on his experience valuing hundreds of programs and working for cable and satellite system operators, he testified that, within categories of homogeneous programming, operators choose to carry programs that viewers are most interested

in watching, and the most commonly accepted source of ratings data is the Nielsen reports. Tr. 177:18-178:21 (Sanders); Ex. 7001 (Sanders WDT) at 15, 17. Mr. Sanders also testified that Dr. Erdem's market valuation approach, which can be summarized as multiplying the volume of households viewing the programs at issue on a distant signal basis by the value of the programs as measured by subscriber interest, is consistent with the value-times-volume approach that is appropriately used in programming valuation situations like this proceeding. Tr. 173:9-175:21 (Sanders); Ex. 7001 (Sanders WDT) at 14-15.

28. The designated testimony of Ms. Toby Berlin further confirmed the validity of a ratings-based methodology. Ex. 7002 (Berlin) at 7. As an executive at DIRECTV and a consultant in cable and satellite programming matters for many years, Ms. Berlin knows first-hand that cable and satellite system operators consistently rely on ratings, as measured by Nielsen, to determine which programs in a category of programming to offer to subscribers. *Id.* at 3; Ex. 7003 at Tr. 78:4-81:16 (Berlin). In fact, Ms. Berlin confirmed that cable operators "viewed ratings as principal measure of value within a defined genre of programming." Ex. 7002 at 7. As an example specific to Devotional programming, Ms. Berlin testified that "Crystal Cathedral, whose Hour of Power program has a loyal following," was "an important bridge to a valuable niche audience that helped DIRECTV grow and sustain growth during a very formative period." *Id.* at 8; *see also* Ex. 7001 (Sanders WDT) at 7 ("Loyalty is measured by the programs that, in general, generate large audiences year after year.").

2. Dr. Erdem Utilized the Most Reliable and Complete Data Available.

29. Because the RODP data comes from Nielsen sweeps periods, it is the most reliable measure of viewership available, and is also the only market-level measure of viewership that is

available in all markets. Tr. 54:21-55:24 (Erdem); Tr. 363:12-15 (Lindstrom). There are four sweeps periods each year, and those months are critical for all participants in the television industry, from local stations to cable and satellite systems. Ex. 7001 (Sanders WDT) at 12.

30. During the sweeps period used to create an RODP, Nielsen will distribute seven-day

diaries to a different sample of households each week during a sweeps month, with a sample size sufficient to cover every market in the United States. *Id.* at 13. The large, comprehensive sample and consistent methodology make the sweeps data underlying the RODPs the most rigorous, influential, and useful industry metric. *Id.*

3. Dr. Erdem Conducted Additional Analysis to Address the Judges' Concerns.

- 31. In reopening the record, the Judges expressed concerns as to whether local ratings are an appropriate proxy for distant viewing, and whether the February RODPs for the years 1999 through 2003 were sufficient data for those years. *Order Reopening Record* at 4-5. The SDC and its witnesses engaged in an extensive search and a variety of analyses to address these concerns. *See* Ex. 7004 (Vay Declaration); Ex. 7005 (Mayhue Declaration); Tr. 56:1-60:7 (Erdem).
 - i. Local Viewership Is a Reliable Proxy for Distant Viewership.
- 32. The SDC's methodology is based on RODP data, which reports average local ratings for Devotional programs on a national basis. Ex. 7001 (Sanders WDT) at 20. This data is useful because it is available and actually used in the industry, and the demand in local markets for viewing programs is likely to relate to demand in distant markets for the same program, absent any peculiarly local programming content. *Id.* at 14-15. In contrast, the only extant source of sweeps data for distant viewing during the time period in question is the Household Viewing

Hours ("HHVH") data created by a former MPAA contractor for the years 1999-2003. Tr. 60:24-62:25 (Erdem). Nielsen did not have any other accessible distant viewing data across all markets for the years at issue in this proceeding. Tr. 62:6-13 (Erdem); Tr. 258:17-259:2 (Sanders); Tr. 310:6-311:14 (Lindstrom).²

- 33. The HHVH data were useful to confirm the commonsense expectation that local ratings would be strongly related to distant viewership in a way that makes the use of RODP local ratings a valid measure of distant viewership. Ex. 7001 (Sanders WDT) at 14-15. This is consistent with the Judges' finding in the 1999 cable case that the local ratings in that case were "very relevant" in the determination of relative market value. *Distribution of 1998-99 Cable Royalty Funds*, 80 Fed. Reg at 13442-43. In the 1999 case, the Judges relied on the correlation between local ratings and distant viewing as measured by the 1999 HHVH data to support their use of local ratings as a valuation measure. *Id.* at 13442.
- 34. At the time the SDC submitted Dr. Erdem's written direct testimony in the initial proceedings of this case, as in the 1999 cable case, the SDC had only the 1999 HHVH data available to confirm the relationship between local and distant viewership. Ex. 7000 (Erdem WDT) at 18. MPAA subsequently produced HHVH data for years 2000 through 2003, so that distant viewing HHVH data is now available for the five years from 1999-2003. Tr. 63:2-24

_

Although MPAA was able to obtain Nielsen PeopleMeter data for the years 2008 and 2009, this data was not available in all markets. Tr. 362:14-23 (Lindstrom) (agreeing that "[I]n a geo-stratified sample for the National People Meter sample ... some geographical areas would be included and other geographical areas only have a chance of being included."). Dr. Gray's methodology for projecting viewership to markets where he was missing data involved use of "the average local ratings of the same [Gracenote] program type broadcast at the same time of day." Ex. 8002 (Gray WDT) at 28 n.41. Because substantially all Devotional programs fall within a single Gracenote category for "religious" programming, use of Dr. Gray's projection in the Devotional category would have been tantamount to assuming that all Devotional programs in unmetered markets had the same ratings. Tr. 476:7-479:20 (Gray). Because the Nielsen PeopleMeter data was not useful in the Devotional category, there was no need for the SDC to examine its potential usefulness otherwise.

- (Erdem). This allowed Dr. Erdem to more effectively test the relationship between distant and local ratings to confirm that local ratings in the RODPs were a reasonable proxy for distant ratings, both for the years 1999-2003 and for the remaining years at issue. Ex. 7000 (Erdem WDT) at 19-20.
- 35. *First*, Dr. Erdem calculated a standard correlation coefficient of 0.79, which was statistically significant across all five years. *Id.* at 19-20. Mr. Sanders noted that a correlation between the local and distant viewing measures is evidence that they have a strong relationship that can be relied upon. Ex. 7001 (Sanders WDT) at 15.
- 36. Second, Dr. Erdem performed a series of regression analyses. Ex. 7000 (Erdem WDT) at 19-21. Regression analysis is a tool that measures the correlation among different data points after controlling for specified factors. Tr. 63:11-23 (Erdem). Dr. Erdem's first regression, using data from all five years rather than just 1999, again showed that there was a strong and statistically significant correlation between local ratings and distant viewership. Ex. 7000 (Erdem WDT) at 19. This conclusion held true both when Dr. Erdem tested for only programs claimed by the parties in the Devotional category, and when he tested for all programs appearing in both the RODPs and HHVH reports, indicating that the relationship was not just a quirk of the specific programs claimed in particular years. *Id*.
- 37. Dr. Erdem then conducted further regressions to test whether the relationship was changing over time, first by testing for a trend, and then by inclusion of year dummies. *Id.* at 19-20 and 30. He found no statistically detectable trend or other change in the relationship between local and distant viewing over time. *Id.* This test allowed him to confirm that, even though viewership may change over time, the changes in viewership are expected to occur similarly in

both local and distant markets. Tr. 64:5-17 (Erdem). Local ratings therefore remain a useful proxy for distant viewing even in years where HHVH data are unavailable. *Id.*³

38. The strong relationship between distant and local viewing is expected, and is further established by industry experts. As Mr. Sanders explained, because industry participants typically do not have viewership information available in their own market when deciding whether to add a non-local signal,

in-market viewership is widely regarded as a reasonable basis to evaluate how a program or station will perform out-of-market. ... Viewership generally translates well from market to market, both in and out of market. The reason is obvious and well-known to the industry—absent some peculiar connection to a local market, the same factors that make a program popular in a local market also tend to make a program popular in distant markets.

Ex. 7001 (Sanders WDT) at 14-15. Confirming this, Ms. Berlin testified that as VP of Program Acquisition at DIRECTV, she regularly relied on ratings from the originating market when distant ratings were unavailable, and that this data was effective for her purposes. Ex. 7003 at Tr. 81:8-82:20 (Berlin). Moreover, in this context, many of the "distant" retransmissions are to neighboring markets—for example, from a city to a nearby suburb or town, where demographics and local interests might not differ much from the originating market. Tr. 185:20-186:25 (Sanders).

ii. The SDC's Methodology Relied on All Available Data.

39. Following the original proceeding, the Judges also expressed a concern that Dr. Erdem had only the February RODPs for the years 1999 through 2003. To address this concern, the

³ Dr. Gray's regression likewise found a positive and statistically significant correlation between local ratings and distant viewing in all years for which he had distant viewing data – an unsurprising finding that is consistent with Dr. Erdem's findings. Tr. 479:21-481:9 (Gray).

SDC engaged in an extensive search to find additional RODPs from the other three sweeps periods in those five years (the calculations from 2004-2009 already were based on four full RODPs from each sweeps period in the year). Tr. 56:4-20 (Erdem); Ex. 7004 (Vay Declaration). This search revealed that Nielsen did not have pre-2004 RODPs available, and that no other libraries or other sources (including the Library of Congress) were able to provide copies of the other RODPs for those five years. Ex. 7004 (Vay Declaration) at ¶¶ 2-6 (detailing search).

- 40. However, one of the Devotional Claimants was able to locate some data from the RODPs in the form of copies of the summary ratings tables (known as "R-7" tables) in its hard copy files. Ex. 7005 (Mayhue Declaration). Those R-7 tables allowed Dr. Erdem to test and confirm that the data from his February RODPs from 1999-2003 could be used as a reliable estimate for annual viewing. Ex. 7000 (Erdem WDT) at 20-21. In short, no further additional data beyond what has been presented is accessible—it is not merely a cost constraint. See Tr. 258:17-259:2 (Sanders).
- 41. The chart below illustrates the years and months for which additional R-7 tables were obtained and used in Dr. Erdem's tests. Of the 15 RODPs that were unavailable, the SDC's search uncovered R-7 tables for 8 of them, or more than half. The SDC now have either the full RODPs or the R-7 tables for 37 out of the 44 sweeps periods (84%) for the years at issue in this proceeding.

Year	February	May	July	November
1999	RODP	R-7	R-7	R-7
2000	RODP	R-7	R-7	-
2001	RODP	ı	ı	R-7
2002	RODP	ı	R-7	-
2003	RODP	R-7	ı	-
2004	RODP	RODP	RODP	RODP
2005	RODP	RODP	RODP	RODP
2006	RODP	RODP	RODP	RODP
2007	RODP	RODP	RODP	RODP
2008	RODP	RODP	RODP	RODP
2009	RODP*	RODP	RODP	RODP

Ex. 7000 (Erdem WDT) at 17.4

- 42. For the years 1999-2003, Dr. Erdem's primary share calculations relied on data from the full February RODP. Tr. 60:9-23 (Erdem). Because Dr. Erdem's methodology relies in part on detail information from the full RODPs that was not included in the R-7 tables, he did not use the R-7 tables in his share calculations. *Id.* But he was able to use the R-7 tables to confirm that the complete February reports were reliable measurements. *Id.*
- 43. *First*, Dr. Erdem tested whether the February RODPs tended to miss any programs that were rated in other reports throughout the year. He found that 91% of the time, a program rated in February was also rated in all of the remaining months. Tr. 57:6-59:9 (Erdem); Ex. 7000 (Erdem WDT) at 20 and 31, Ex. 4.
- 44. *Second*, Dr. Erdem tested whether the February reports were representative of program ratings throughout the year. Dr. Erdem found that approximately 97% of the time, the ratings for a program did not change more than 0.1 (the smallest increment Nielsen ratings may change),

17

⁴ Note that the first sweeps period in 2009 was in March instead of February.

between the February rating and the rating in the next sweeps period of the same year. Tr. 57:16-22 (Erdem); Ex. 7000 (Erdem WDT) at 21 and 31, Ex. 5.

- 45. *Third*, Dr. Erdem conducted sensitivity tests to recalculate all of his share calculations with February data only for all years, and then with all available data for all years (including data from R-7 tables). He found that the changes were not material. Ex. 7000 (Erdem WDT) at 21 and 32, Exs. 6 and 7. Dr. Erdem concluded that the use of February RODPs did not tend to systematically introduce bias to the royalty share calculations. Tr. 59:16-60:2 (Erdem).
- 46. Dr. Erdem's tests using the additional data confirmed that the February reports are representative of the remainder of the year, and that local ratings remain consistent over time. Tr. 59:10-15 (Erdem). As a result, missing reports for some sweeps months in the years 1999 through 2003 has little impact on the share calculations. Tr. 59:16-60:7 (Erdem); Ex. 7000 (WDT) at 21-22.

II. CONCLUSIONS OF LAW

A. Legal Standard

- 47. Section 111(d)(4) of the Copyright Act does not prescribe specific factors that the Judges must apply to determine how to distribute royalties. 17 U.S.C. § 111(d)(4). However, the Judges and their predecessors have held that relative marketplace value must guide the allocation of royalties among participants. *See Distribution of 2004 and 2005 Cable Royalty Funds*, Distribution Order, Docket No. 2007-3 CRB CD 2004-2005 (Phase I), 75 Fed. Reg. 57063, 57065 (Sept. 17, 2010); *Program Suppliers v. Librarian of Congress*, 409 F.3d 395, 401 (D.C. Cir. 2005).
- 48. Accordingly, the preeminent consideration in the allocation of funds in the Devotional category is the relative market value of the SDC's distantly retransmitted programming as a whole and the relative market value of IPG represented claimants' distantly retransmitted programming as a whole. *See Distribution of 2000-03 Cable Royalty Funds*, 78 Fed. Reg. 64984, 64986 (Oct. 30, 2013) (citing *Program Suppliers v. Librarian of Congress*, 409 F.3d 395, 401 (D.C. Cir. 2005)), aff'd in part, *Independent Producers Group v. Librarian of Congress*, 792 F.3d 132 (D.C. Cir. 2015); vacated in part on other grounds, *Settling Devotional Claimants v. Copyright Royalty Board*, 797 F.3d 1106 (D.C. Cir. 2015); *Distribution of 1998-99 Cable Royalty Funds*, 80 Fed. Reg. 13423, 13428 (Mar. 13, 2015). Because the SDC and IPG have internal formulas for allocating awarded royalties among their respective individual claimants, the Judges need not assign a value to each individual claimant. *Distribution of 2000-03 Cable Royalty Funds*, 78 Fed. Reg. at 64986.

- 49. "Market value" is identical to "fair market value," traditionally defined as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts." *Distribution of 1998-99 Cable Royalty Funds*, 80 Fed. Reg. at 13428 (quoting *U.S. v. Cartwright*, 411 U.S. 546, 551 (1973)). The term "relative" market value denotes that the value of one group of retransmitted programs is "to be determined in relation to the value of all other programs within the bounds of the respective Phase I category definitions," and thus can be expressed as a percentage of total market value, rather than as a dollar amount. *Id*.
- 50. Because the compulsory license "substitutes for marketplace negotiations in the buying and selling of broadcast programming," there is no real marketplace for those broadcast programs retransmitted by cable and satellite systems. *Distribution of 1998-1999 Cable Royalty Funds*, Final Order, Docket No. 2001-8 CARP CD 98-99 (Phase I), 69 Fed. Reg. 3606, 3608 (Jan. 26, 2004). The Judges must therefore select an appropriate mechanism by which to estimate the relative price at which a "willing buyer" would pay a "willing seller" for the right to distantly retransmit broadcast programs in a hypothetical market without such statutory compulsions. *Id.* In so doing, the Judges are required by statute "to act in accordance with regulations issued by the Copyright Royalty Judges and the Librarian of Congress, and on the basis of a written record, prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, Register of Copyrights, copyright arbitration panels, and the Copyright Royalty Judges[.]" 17 U.S.C. § 803(a).

B. The SDC's Methodology Is Reliable and Supported by Precedent.

- 51. In Phase II proceedings, "actual measured viewing is significant to determining relative marketplace value." *Distribution of 2000-2003 Cable Royalty Funds*, 78 Fed. Reg. at 64986. Viewership is the most relevant and appropriate measure of relative value in Phase II proceedings among programs that are geared to the same audience, such as Devotional programming appealing to a predominantly Christian audience. *See Distribution of 1998-99 Cable Royalty Funds*, 80 Fed. Reg. at 13437 ("[T]he programs within the Devotional Claimants category on the surface appear to be more homogeneous *inter se* than they are in comparison with programs in either the Sports Programming or the Program Suppliers' claimant categories."). Relative homogeneity among programs within a category "suggests that a rational CSO would not be as concerned with whether different programs would attract different audience segments (compared with more heterogeneous programming) and therefore the CSO would rely to a greater extent on absolute viewership levels." *Id.*
- The Judges and their predecessors have frequently used viewership as a measure of relative marketplace value in allocating shares of cable royalties, particularly with respect to Phase II allocations. *1986 Cable Royalty Distribution Proceeding*, Notice of final determination, Docket No. CRT 88-2-86CD (Phase II), 54 Fed. Reg. 16148, 16153 (Apr. 21, 1989); *see also Distribution of 2000-2003 Cable Royalty Funds*, 78 Fed. Reg. at 64986. Indeed, the Judges have concluded that "viewership is the initial and predominant heuristic that a hypothetical CSO would consider in determining whether to acquire a bundle of programs for distant retransmission..." 78 Fed. Reg. at 64996.

- 53. In the 1999 cable determination, the Judges found that use of "viewership as an indicium of program value is reasonable, appropriate, and consistent with recent precedent in distribution proceedings" for determining the relative market value of programs in the Devotional category when there is insufficient evidence available to conduct the optimal analysis using "Shapley-approximate values." *Distribution of 1998-99 Cable Royalty Funds*, 80 Fed. Reg. at 13442. The SDC's methodology relies on program viewership data to determine relative market value of Devotional programing and is the appropriate approach for allocating Devotional shares in this proceeding.
- 54. By scaling local ratings to distant subscribership, the SDC have substantially improved upon the viewership methodology that the Judges adopted in the 1999 cable proceeding. *Id.* at 13433. Further, the Nielsen viewing data used by the SDC in this proceeding is even more reliable than the single Nielsen RODP that the Judges relied upon in the 1999 cable proceeding. Instead of using only a single report, Dr. Erdem had one report for each year from 1999 through 2003, R-7 tables from eight more RODPs from other sweeps months in the same years, and all four reports for each year from 2004 through 2009, collectively containing data for 37 sweeps months, including at least two sweeps months for every year in this proceeding. As the Judges found in the 1999 cable determination, they are "confident that, generally, Nielsen-derived viewership data presents a useful measurement of actual viewership," in part because of Mr. Sanders's testimony that "those in the television industry consider viewership data, as compiled to Nielsen, to be the best and most comprehensive measure of viewership." *Id.*
- 55. The SDC's methodology uses local Nielsen data to determine the value of distantly retransmitted programs, which is precisely what the Judges did in the 1999 cable proceeding,

despite having been presented distant viewing data. *Id.* The Judges' allocation of royalties in the Devotional category in that case was based solely on local ratings, finding that "the viewership data for the SDC and IPG programs in the local market ... served as an 'analogous' market by which to estimate the distribution of royalties in th[e] proceeding..." *Id.* at 13442.

- 56. Additionally, in the 2000-2003 Distribution Proceeding, the Judges endorsed MPAA expert Dr. Gray's decision to use Nielsen local ratings data and CDC distant subscriber data in his analysis to determine the relationship between local viewing and distant viewing, finding that the use of local viewing data strengthened the results and mitigated perceived problems with the Nielsen distant viewing data. *Distribution of 2000-2003 Cable Royalty Funds*, 78 Fed. Reg. at 64996.
- The SDC's measure of viewership is the best available means of assessing the relative market value of the Devotional programming in this proceeding, and it also is the only such methodology in the record of this proceeding. It allows the Judges to make a rational, non-arbitrary allocation of the Devotional royalty fund based on substantial evidence in the record. 5 U.S.C. § 706; *Nat'l Assoc. of Broadcasters v. Copyright Royalty Tribunal*, 146 F.3d 907, 923 (D.C. Cir. 1992). Mr. Sanders's and Dr. Erdem's analyses set forth a methodology of sufficient precision for a reliable result. This is all that is required to enable the Judges to allocate shares within a zone of reasonableness in the Devotional category. *Christian Broadcasting Network*, *Inc. v. Copyright Royalty Tribunal*, 720 F.2d 1295, 1304 (D.C. Cir. 1983) (citing *Nat'l Assoc. of Broadcasters v. Copyright Royalty Tribunal*, 675 F.2d 367, 374 (D.C. Cir. 1982)).
- 58. Any negative adjustment to the SDC's proposed distribution would be arbitrary and not substantiated in the record. Although the Judges have in the past resorted to discounting

valuation methodologies based on perceived shortcomings, this practice comes with an important caveat: the opposing claimants must demonstrate a likelihood that they were harmed by the alleged deficiencies:

[V]iewing measurements are not perfect and the Judges must be prepared to make appropriate adjustments when claimants are able to demonstrate that their programs have not been measured or are significantly undermeasured.

Distribution of 2000-2003 Cable Royalty Funds, 78 Fed. Reg. at 64986 (citing authorities) (emphasis added). IPG has made no such showing, nor did it even attempt to do so. IPG has failed to present a single witness in this proceeding, despite ample opportunity to present testimony in the reopened record. Any adjustment to the allocations to the SDC's detriment would be more likely to exacerbate any flaw in the methodology than to correct it. The Judges should not "let[] the perfect be the enemy of the good." Distribution of 1998-99 Cable Royalty Funds, 80 Fed. Reg. at 13432.

- 59. In the 1999 proceeding, the Judges rejected the distributions suggested by the SDC based on distant viewing data, preferring instead to rely on a local ratings methodology based on the RODP for February, 1999. *See id.* at 13442-43. The Judges relied on local viewing data in the 1999 case because they found it to be the most reliable evidence of value. *See id.* ("Importantly, that approach does not suffer from the uncertainty created by the selection and use of the Kessler Sample of stations, nor any of the other serious potential or actual deficiencies in the application of the SDC Methodology ..."). It is also the most reliable evidence—and only evidence—of value for Devotional programs in this case.
- 60. A reasoned justification to discount an award, or to determine any award, "requires more than an absence of contrary evidence; it requires substantial evidence to support a decision."

Settling Devotional Claimants v. Copyright Royalty Board, 797 F.3d 1106, 1121 (D.C. Cir. 2015) (quoting Intercollegiate Broadcast System, Inc. v. Copyright Royalty Board, 571 F.3d 69, 87 (D.C. Cir. 2009)). There is no substantial evidence that would support a conclusion that the results of the SDC's methodology overstate the relative market value of the SDC's programming. To the contrary, as the Judges determined in the 1999 cable proceeding, and as Dr. Erdem testified again in this proceeding, Shapley valuation predicts that ratings underestimate the value of highly viewed programs, when comparing programs within a niche geared toward similar audiences that have similar levels of overlap among viewers. Ex. 7000 (Erdem WDT) at 23; Distribution of 1998-99 Cable Royalty Funds, 80 Fed. Reg. at 13433 n. 36 ("[W]hen there is an overlap in viewership between programs, a purely viewership-based valuation, such as that proffered by the SDC, might understate the relative value of programs with higher viewership (i.e., the SDC programs) and overstate the IPG distribution percentage compared to a Shapley valuation.") (emphasis in original).

61. Because the SDC's methodology appropriately relies on viewership data with the required amount of precision, because it improves upon the very methodology adopted by the Judges in the 1999 cable proceeding, and because there is no evidence that it overstates the SDC's relative marketplace value, it is an appropriate measure of the relative marketplace value of Devotional programming in this proceeding. *See Nat'l Assoc. of Broadcasters*, 146 F.3d at 923; *Distribution of 1998-99 Cable Royalty Funds*, 80 Fed. Reg. at 13433; *Distribution of 2000-2003 Cable Royalty Funds*, 78 Fed. Reg. at 64986.

III. CONCLUSION

62. The Judges should award royalty funds in the Devotional category for 2004-2009 cable and 1999-2009 satellite as follows:

Cable

Year	IPG	SDC
2004	10.9%	89.1%
2005	10.8%	89.2%
2006	12.5%	87.5%
2007	7.6%	92.4%
2008	9.8%	90.2%
2009	10.0%	90.0%

Satellite

Year	IPG	SDC
1999	0.0%	100.0%
2000	0.0%	100.0%
2001	1.2%	98.8%
2002	1.5%	98.5%
2003	2.8%	97.2%
2004	1.2%	98.8%
2005	1.6%	98.4%
2006	8.8%	91.2%
2007	2.9%	97.1%
2008	-	-
2009	2.1%	97.9%

Date: May 8, 2018 Respectfully submitted,

/s/ Jessica T. Nyman

Matthew J. MacLean (D.C. Bar No.479257)

Matthew.MacLean@PillsburyLaw.com

Michael A. Warley (D.C. Bar No. 1028686)

Michael.Warley@PillsburyLaw.com

Jessica T. Nyman (D.C. Bar No. 1030613)

Jessica.Nyman@PillsburyLaw.com

PILLSBURY WINTHROP SHAW PITTMAN LLP

1200 17th Street NW

Washington, DC 20036

Telephone: 202-663-8000 Facsimile: 202-663-8007

Counsel for the Settling Devotional Claimants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent electronically on May 8, 2018, to the following:

INDEPENDENT PRODUCERS GROUP

Brian D. Boydston PICK & BOYDSTON, LLP 10786 Le Conte Avenue Los Angeles, CA 90024 brianb@ix.netcom.com

MPAA- REPRESENTED PROGRAM SUPPLIERS

Gregory O. Olaniran
Lucy Holmes Plovnick
Alesha Dominique
MITCHELL SILBERBERG & KNUPP LLP
1818 N Street, NW, 8th Floor
Washington, DC 20036
goo@msk.com
lhp@msk.com
amd@msk.com

/s/ Jessica T. Nyman
Jessica T. Nyman

Certificate of Service

I hereby certify that on Tuesday, May 08, 2018 I provided a true and correct copy of the Settling Devotional Claimants' Proposed Findings of Fact and Conclusions of Law to the following:

MPAA-Represented Program Suppliers, represented by Lucy H Plovnick served via Electronic Service at Ihp@msk.com

Independent Producers Group (IPG), represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

Signed: /s/ Jessica T Nyman